



# Department of Justice

Acting United States Attorney Richard S. Hartunian  
Northern District of New York

FOR IMMEDIATE RELEASE  
TUESDAY, March 26, 2013  
<http://www.usdoj.gov/usao/nyn>

CONTACT: FAUSA Grant C. Jaquith  
(518) 431-0247

## **EHRlich PLEADS GUILTY TO OBSTRUCTION OF JUSTICE**

*Albany, New York* – United States Attorney Richard S. Hartunian and Special Agent-in-Charge Andrew Vale of the Albany Division of the Federal Bureau of Investigation announce that David A. Ehrlich, 38, of Cohoes, a former lawyer, pled guilty yesterday to obstruction of justice, as charged in Count 1 of the Indictment filed December 12, 2012. Ehrlich's guilty plea was entered in an appearance before Chief United States District Judge Gary L. Sharpe in Albany.

As part of his guilty plea and plea agreement, Ehrlich admitted that he obstructed justice in *United States v. Joseph P. Brown*, a criminal appeal before the United States Court of Appeals for the Second Circuit, by preparing and providing to Brown's wife a brief Ehrlich falsely represented had been filed, and then preparing and providing to Brown's wife a document Ehrlich falsely represented to be the written decision of the United States Court of Appeals for the Second Circuit denying Brown's appeal. Ehrlich admitted that:

On July 18, 2007, in U.S. District Court for the Northern District of New York, Joseph P. Brown was sentenced to be imprisoned for 60 months upon his conviction of possession of child pornography. Timely notice of appeal was filed on Brown's behalf. Ehrlich did not represent Brown in the District Court case, but agreed to handle Brown's appeal, and obtained \$7500 from Brown's wife as payment. Ehrlich later provided Mrs. Brown with a ten page document dated November 20, 2007, that Ehrlich represented to be the appellate brief he had prepared and submitted. The document requested that Brown's "plea of guilty be vacated, or alternatively that this matter be remanded to the district court for sentencing consistent with Rita v. United States and Gall v. United States." In

truth and in fact, Ehrlich never submitted a brief for Brown to the Court of Appeals. The Court of Appeals had set a deadline of October 22, 2007, for a brief to be filed on behalf of Brown, and then extended the deadline to November 30, 2007. When no brief was filed, the Court of Appeals issued an order to show cause why the appeal should not be dismissed for failure to file a brief by the date specified in the scheduling order. There was no response, so Brown's appeal was dismissed by the Court of Appeals by order filed January 16, 2008; the mandate was issued on March 17, 2008.

Ehrlich later provided Mrs. Brown with a document dated May 13, 2008, that appeared to be, and was represented by Ehrlich to be, the written decision of the United States Court of Appeals for the Second Circuit denying Brown's appeal. In truth and in fact, Ehrlich had falsely prepared the document he misrepresented to be the Court's decision using language from the opinion of the United States Supreme Court in *Strickland v. Washington*, 466 U.S. 668 (1984), pages 684 -689; the unpublished opinion of the United States Court of Appeals for the Second Circuit in *Grune v. Coughlin*, 152 F.3d 918, 1998 WL 382608 (2d Cir. May 7, 1998), pages 1-2; and the opinion of the United State Supreme Court in *Rita v. United States*, 551 U.S. 338 (2007), pages 350-351 and 356. The fake decision prepared by Ehrlich falsely stated that the appeal had been argued on December 19, 2007, before Chief Judge Jacobs, Judge Pooler, and Judge Sack, and falsely stated that the Court affirmed Brown's sentence upon its holding "that the plea of Brown was knowing and voluntary, that he was adequately represented by counsel, and that the sentencing court did not err in the imposition of sentence."

Because Joseph P. Brown had been denied his right to pursue an appeal by the conduct of DAVID A. Ehrlich, Brown had to prepare and file a motion under 28 U.S.C. § 2255 to vacate, set aside, or correct his sentence upon his claim that he was denied effective assistance of counsel, and the U.S. District Court had to enter a new judgment so Brown could pursue an appeal.

Ehrlich was released pending sentencing, which is scheduled for July 29, 2013, at 9:00 am, in Albany. Ehrlich faces a maximum sentence of up to 10 years imprisonment, to be followed by supervised release for up to 3 years, a fine of up to \$250,000, and a special assessment of \$100. Ehrlich agreed to make restitution of the \$7500 paid by the Browns and a total of \$1400 paid him by two other clients, and has done so.

On April 22, 2010, Ehrlich was disbarred in New York by the Supreme Court, Appellate Division, Third Department.

United States Attorney Hartunian said, "Due process of law is the cornerstone of our democracy. When due process is subverted by a lawyer with a sworn duty to represent faithfully the interests of a defendant, it is a significant crime. The vigilance and outstanding work by the Albany Division of the Federal Bureau of Investigation and state agencies such as the Committee on Professional Standards for the Third Judicial Department of the Appellate Division of the Supreme Court for the State of New York and The Lawyers' Fund for Client Protection of the State of New York restores fairness to the administration of justice."

The investigation was conducted by the Albany Division of the Federal Bureau of Investigation. The case is being prosecuted by First Assistant U.S. Attorney Grant C. Jaquith, to whom inquiries may be directed at (518) 431-0247.